

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

CANHAM V. CANHAM

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

NATHAN D. CANHAM, APPELLANT,
V.
HEIDI M. CANHAM, APPELLEE.

Filed April 20, 2010. No. A-09-1114.

Appeal from the District Court for Thayer County: VICKY L. JOHNSON, Judge. Affirmed.

Riko E. Bishop, of Perry, Guthery, Haase & Gessford, P.C., L.L.O., for appellant.

Kathleen Koenig Rockey, of Copple, Rockey, McKeever & Schlecht, P.C., L.L.O., for appellee.

IRWIN, CARLSON, and MOORE, Judges.

IRWIN, Judge.

INTRODUCTION

Nathan D. Canham appeals from an order of the district court for Thayer County dissolving his marriage to Heidi M. Canham. He contests the court's award of custody of the parties' two children to Heidi. We find no abuse of discretion in the court's decision. Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

STATEMENT OF FACTS

The parties were married on June 26, 2004, and are the parents of twin girls born the following year. In his August 2008 petition for dissolution of the parties' marriage, Nathan asked that primary custody of the twins be awarded to him. Trial testimony shows that Nathan has had steady work as an irrigation welder for several years, while Heidi has worked at a number of different jobs. Heidi moved from the family home in the summer of 2008, leaving the twins in Nathan's care. Nathan disapproved of Heidi's living quarters during the early months of the

parties' separation, noting that at various times she lived in a one-room area next to a garage and a low-income housing apartment. Nathan testified that he did not believe that Heidi's living arrangements were healthy for the twins. Nathan stated that Heidi behaved selfishly after she left him, leaving the twins in his care for much of the time and spending her time partying. He believed that she lied to him at times about her reasons for not being able to care for the twins on certain days. Nathan conceded that there had been two incidents of domestic violence on his part, one of which involved the police, after he lost his temper with Heidi. He also acknowledged that one of the twins was slightly injured by an infant seat he tossed into the car while angry after seeing a picture of Heidi's boyfriend in the car. He testified that the incident was unintentional. He denied excessive use of alcohol.

Heidi testified that she has held several jobs since the twins' birth. She stated that it was difficult at times to balance the needs of very young twins with a job schedule. She is now planning to attend college and is working at a business owned by her parents which she says allows for flexible scheduling. She acknowledged that she had not been truthful at times with Nathan as to her whereabouts but explained that he would become upset if he discovered that she was spending time with other men. She claimed that Nathan drank to excess and sometimes became violent and used abusive language.

The record contains other allegations and descriptions of both parties about the other. It serves no useful purpose to discuss these allegations in detail.

The district court found that both parties were fit and proper persons to be awarded custody of the twins and noted that both were "universally described" as a good mother or father. The court noted that both parties had "deficits" but that Heidi had recently grown up significantly. The court stated that Nathan has anger and control issues and had abused alcohol. The court found that it was in the children's best interests that their legal and physical custody be awarded to Heidi, stating that the determining factor was Nathan's anger and control problem. The court stated that a critical factor in its custody decision was the incident in which one of the twins was slightly injured when Nathan "threw, or shoved, a car seat at his daughter, hitting her" while angry about seeing a picture of Heidi's boyfriend. The court stated that Nathan's inability to control his anger to avoid hurting his daughter "tips the balance" in Heidi's favor with regard to custody. Nathan appeals from the entry of the dissolution order.

ASSIGNMENT OF ERROR

Nathan asserts that the district court abused its discretion in awarding custody to Heidi.

STANDARD OF REVIEW

Child custody determinations are matters initially entrusted to the discretion of the trial court, and although reviewed de novo on the record, the trial court's determination will normally be affirmed absent an abuse of discretion. *Rosloniec v. Rosloniec*, 18 Neb. App. 1, 773 N.W.2d 174 (2009). A judicial abuse of discretion exists when a judge, within the effective limits of authorized judicial power, elects to act or refrains from acting, and the selected option results in a decision which is untenable and unfairly deprives a litigant of a substantial right or a just result in matters submitted for disposition through a judicial system. *Id.*

ANALYSIS

Nathan contends that the district court erred in awarding custody of the twins to Heidi. He points to the district court's description of the incident with the infant car seat, arguing that the court misstated the evidence in saying that Nathan threw or shoved the seat "at" his daughter. Nathan argues that he did not throw the seat "at" his daughter but was merely frustrated at being unable to maneuver the car seat into the back seat of the car while also being upset at seeing the picture of Heidi's boyfriend. Nathan's view of the incident is that of an unfortunate accident which the district court improperly treated as the tipping point in its custody decision.

While we agree that the evidence does not show that Nathan deliberately threw the seat at his daughter, we believe that the larger point being made by the district court was that Nathan's temper was at times out of control and that his anger was often directed at those closest to him. In short, the district court found that both parties exhibited good and bad characteristics, but, in its final choice, the court found that Nathan's inability to control his temper was a determining factor in its custody decision.

In contested custody cases, where material issues of fact are in great dispute, the standard of review and the amount of deference granted to the trial judge, who heard and observed the witnesses testify, are often dispositive of whether the trial court's determination is affirmed or reversed on appeal. *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008). We conclude that the trial court did not abuse its discretion in awarding custody of the minor children to Heidi.

CONCLUSION

Upon our de novo review of the record, we cannot say that the district court's decision to award Heidi custody of the twins was an abuse of discretion. Accordingly, we affirm the decision of the district court.

AFFIRMED.